

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

7

DECISION

TOPIC

**Notice of Intended Action – New Chapter 35 – Air Emissions
Reduction Assistance Program**

The Commission will be requested to approve this Notice of Intended Action to adopt a new Chapter 35 to create a financial assistance program for air quality purposes.

The federal American Recovery and Reinvestment Act of 2009 (Act) appropriated \$300 million dollars to reduce diesel emissions across the country. The State of Iowa anticipates receiving approximately \$1.7 million dollars. The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses diesel vehicles and equipment currently used for on-road applications, like buses and heavy duty diesel trucks, and non-road applications, like construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and clean diesel emerging technologies.

There is an expedited timeline for funds from the federal Act to be distributed to eligible applicants. U.S. EPA must report the details of the programs to Congress by mid-May 2009. Disbursement of funds is anticipated to be required shortly after approval of the programs. The Department is proposing this rulemaking in an expedited manner to meet the timeline requirements of the federal Act. The Department is also publishing an Adopted and Filed Emergency notice regarding this rulemaking.

To facilitate the rulemaking process, the Department patterned the new chapter after the Solid Waste Alternative Program (SWAP) in 567 IAC 209. Guidelines for the financial assistance program and application forms will be posted on our website. A public hearing will be held on May 11, 2009 at 10:00 a.m. at the Air Quality Bureau.

Wendy Rains, Environmental Specialist Senior
Air Quality Bureau
Environmental Services Division

February 23, 2009

ENVIRONMENTAL PROTECTION COMMISSION

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.103(5), the Environmental Protection Commission (hereafter called the Commission) hereby gives Notice of Intended Action to adopt Chapter 35, “Air Emissions Reduction Assistance Program” of the Iowa Administrative Code.

The purpose of this amendment is to create a financial assistance program to distribute funds appropriated to Iowa through the federal American Recovery and Reinvestment Act of 2009 (Act). The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses diesel vehicles and equipment currently used for on-road applications, like buses and heavy duty diesel trucks, and non-road applications, like construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and clean diesel emerging technologies.

There is an expedited timeline for funds from the federal Act to be distributed to eligible applicants. The Department is proposing this rulemaking in an expedited manner to meet the timeline requirements of Section 701 of the federal Act. According to the provision of Section 701, U.S. EPA must report the details of the programs to Congress by mid-May 2009. Disbursement of funds is anticipated to be required shortly after approval of the programs. Guidelines for the financial assistance program and application forms will be posted on the DNR’s website.

Any person may make written suggestions or comments on the proposed amendments on or before May 12, 2009. Written comments should be directed to Wendy Rains, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite

1, Urbandale, Iowa 50322, fax (515) 224-5094, or by electronic mail to wendy.rains@dnr.iowa.gov.

A public hearing will be held on May 11, at 10:00 a.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than May 12, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Wendy Rains at (515) 281-6061 to advise of any specific needs.

This amendment was also Adopted and Filed Emergency and is published herein as ARC [to be updated]. This amendment is intended to implement Iowa Code section 455B.103(5).

The following amendment is proposed.

ITEM 1. Adopt a new 567—Chapter 35(455B) as follows:

CHPATER 34
AIR EMISSIONS REDUCTION ASSISTANCE PROGRAM

567—35.1(455B) Purpose. The purpose of this program is to provide financial assistance to eligible applicants for the purpose of reducing air pollution emissions.

567—35.2(455B) Definitions. For the purposes of this chapter, the following definitions shall apply.

“Applicant” means any unit of Iowa or local government, public or private group, business or individual.

“Cost share” means applicant’s share of proposed eligible project costs.

“Department” means the Iowa department of natural resources.

“Eligible costs” means costs directly related to the eligible project and for which financial assistance monies may be used.

“Eligible project” means any project which, when implemented, will reduce air emissions.

“Financial assistance” means monetary assistance awarded under these rules to an applicant in the form of grants or loans.

“Grant” means an award of assistance with the expectation that, with the fulfillment of the conditions of the award, repayment of funds is not required.

“Loan” means an award of financial assistance with the requirement that the award be repaid including interest as identified in the written agreement between the department and the recipient. A “deferred loan” is one for which the payment for principal, interest, or both, is not required for some specified period. A “forgivable loan” is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“Recipient” means any applicant selected to receive financial assistance under these rules.

567—35.3(455B) Role of the department of natural resources. The department is responsible for the administration of the program and disbursement of funds for eligible projects receiving financial assistance under these rules.

567—35.4(455B) Eligible projects. The department may provide financial assistance to applicants for projects that are consistent with the purpose of this program.

567—35.5(455B) Forms. Applicants shall submit proposed eligible projects on application forms provided by the department. The proposals are considered part of the public record.

567—35.6(455B) Project selection. The director has sole discretion to determine which eligible projects receive an award of monies under this program. Emphasis in selecting eligible projects will be placed on the amount of air pollution emissions reductions anticipated, cost effectiveness, and the proposed location of the eligible project. Proposed eligible projects must be in compliance with all applicable state and federal statutes and rules. The director shall evaluate the proposals and applicants will be awarded financial assistance based on selection criteria contained in the applicable application guidelines available from the department.

567—35.7(455B) Funding sources. The department will use the funds designated by the legislature and other sources to achieve the purpose outlined in these rules.

567—35.8(455B) Type of financial assistance. Financial assistance awarded under this program may be in the form of a loan, forgivable loan, deferred loan, grant, or a combination thereof. The type of financial assistance offered to an applicant is dependent upon the amount of program funds awarded to each selected eligible project. The department reserves the right to offer any combination of financial assistance types to any selected eligible project.

567—35.9(455B) Term of loans. The term of all loans executed under these rules shall be determined on a case-by-case basis and shall be based on the specific costs financed, as well as the terms of other financing provided for the eligible project. The written agreement between the department and the recipient will establish other conditions or terms needed to manage or implement the eligible project.

567—35.10(455B) Reduced award. The department reserves the right to offer financial assistance in an amount less than that requested by the applicant. In the event that financial assistance is offered that is less than the amount requested by an applicant, the applicant may be asked to document the impact on the proposed eligible project. Reduced awards shall be offered where it has been determined by the department that:

35.10(1) Program resources are insufficient to provide the level of financial assistance requested to all applicants to which the department intends to offer financial assistance.

35.10(2) The applicant could implement the eligible project at a reduced level of financial assistance and achieve the eligible project objectives and purpose of this program.

567—35.11(455B) Fund disbursement limitations. No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the eligible project;
2. Determined that financing for the cost share amount, if applicable, is ensured by the recipient;

3. Received confirmation that all required permits or permit amendments have been obtained by the recipient;
4. Received commitments from the recipient to implement the eligible project; and
5. Executed a written agreement with the recipient.

567—35.12(455B) Applicant cost share. If requested by the department, an applicant for financial assistance shall agree to provide a cost share of funds committed to the eligible project. Financial assistance monies received by the applicant under these rules are ineligible to be utilized for any portion of the required applicant cost share. Applicant cost share shall be in accordance with the schedule outlined in the applicable application guidelines available from the department.

567—35.13(455B) Eligible costs. Applicants may request financial assistance in the implementation and operation of an eligible project which includes, but is not limited to, funds for the purpose of:

1. Air pollution reduction equipment purchase and installation;
2. Air pollution control equipment, or process and equipment changes including labor for installation;
3. Development, printing and distribution of educational materials;
4. Planning and implementation of educational forums including, but not limited to, workshops;
5. Expenses directly related to implementation and operation of the eligible project; and

6. Research, laboratory analysis costs, engineering, or consulting fees.

567—35.14(455B) Ineligible costs. Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Legal costs;
4. Contingency funds;
5. Proposal preparation;
6. Contractual project administration;
7. Land acquisition;
8. Office furniture, office computers, fax machines and other office furnishings and equipment;
9. Costs for which payment has or will be received under another federal, state or private financial assistance program; and
10. Costs incurred before a written agreement has been executed between the applicant and the department. Ineligible costs shall be determined with applicable publications from the federal office of management and budget.

567—35.15(455B) Written agreement. Each recipient shall enter into a contract with the department for the purposes of implementing the eligible project for which financial assistance has been awarded. The contract shall be signed by an authorized representative of the department and the authorized officer of the recipient. In cases where the department has awarded other than a grant or forgivable loan, the recipient will be

required to make regularly scheduled installment payments to retire the loan and any interest assigned to the loan as identified in the executed contract. The recipient will be required to submit periodic progress reports as identified in the executed contract. Progress reports are considered part of the public record. The department may terminate any contract and seek the return of any funds released under the contract for failure by the recipient to perform under the terms and conditions of the contract. Amendments to contracts may be adopted by mutual written consent by the department and the selected applicant.

567—35.16(455B) Financial assistance denial. An applicant may be denied financial assistance for any of the following reasons:

- 35.16(1)** Funds are insufficient to award financial assistance to all qualified applicants;
- 35.16(2)** An applicant does not meet eligibility requirements pursuant to provisions of these rules;
- 35.16(3)** An applicant does not provide sufficient information requested on forms provided by the department pursuant to these rules;
- 35.16(4)** An applicant that has previously received a loan under these rules and is determined by the department to be delinquent in repaying the loan;
- 35.16(5)** The eligible project goals or scope is not consistent with these rules; or
- 36.16(6)** The director concludes the denial is appropriate.

Date

Richard A. Leopold, Director

Administrative Rule Fiscal Impact Statement

Date: February 16, 2009

Agency: Department of Natural Resources

IAC Citation: 567 IAC Chapter 35

Agency Contact: Wendy Rains

Summary of the Rule: The State of Iowa anticipates receiving approximately \$1.7 million dollars from the federal American Recovery and Reinvestment Act of 2009 for diesel emissions reduction projects. The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses diesel vehicles and equipment currently used for on-road applications, like buses and heavy duty diesel trucks, and non-road applications, like construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, or clean diesel emerging technologies.

Fill in this box if the impact meets these criteria:

☐ No Fiscal Impact to the State.

☐ Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

☐ Fiscal Impact cannot be determined.

Brief Explanation:

Fill in the form below if the impact does not fit the criteria above:

☒ Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

The U.S. Environmental Protection Agency indicates that each State will receive approximately \$1.7 million dollars from the federal American Recovery and Reinvestment Act of 2009. The funding, directed through the Diesel Emission Reduction Act (DERA) grants pursuant to Title VII, subtitle G of the Energy Policy Act of 2005, is for diesel emissions reduction projects. This funding is not subject to DERA's matching incentive provision in section 793(c)(3). The program is on an expedited timeline. U.S. EPA had indicated funds will be distributed to States by May 2009. States will be required to disburse the funds via grants and/or loans to eligible participants quickly to stimulate the economy while reducing diesel emissions.

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY 2010)</u>	<u>Year 2 (FY 2011)</u>
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS	\$1,700,000	
Other (specify)		
TOTAL REVENUE	<u>\$1,700,000</u>	<u></u>
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS	\$1,700,000	
Other (specify)		
TOTAL EXPENDITURES	<u>\$1,700,000</u>	<u></u>
NET IMPACT	\$0	

☐ This rule is required by State law or Federal mandate.

Please identify the state or federal law:

☒ Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

The federal American Recovery and Reinvestment Act of 2009 provided funding.

☐ Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

Diesel exhaust is a health issue for Iowans as well as a common contributor to air pollution. Pollutants from diesel exhaust easily enter the lung tissue to aggravate asthma, allergies, and other respiratory illness. Iowa has portions of two counties that are close to violating federal air quality standards for particulate matter. Reducing diesel emissions would help to reduce particulate matter levels statewide and exposure to respiratory irritants.

This rulemaking establishes a financial assistance program for individuals and businesses to fund diesel emission reduction projects.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

Local governments and Counties may apply to the financial assistance program; however, they are also eligible to apply for a separate, competitive portion of the funding.

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Wendy Rains

Telephone Number: 281-6061